

09C-1233

Reference 3.1.1

COMPTROLLER GENERAL OF THE UNITED STATES

Washington 25

B-93365

March 16, 1950

Director

Central Intelligence Agency

My dear Mr. Director:

Reference is made to your letter of February 23, 1950, ER-0-8913 requesting decision upon the questions therein stated, as follows:

"1. When an employee regularly assigned to an overseas post temporarily returns to the United States for purposes of official consultation, does the grant of a period of either annual or sick leave while in the United States break the continuity of his 'continuous service abroad'?

"2. Does the granting of a period of annual leave to permit return to the United States at the personal expense of an employee regularly assigned to an overseas post, solely for the purpose of meeting a personal emergency, interrupt the continuity of his 'continuous service abroad'?

"3. In the event an employee is returned to the United States on sick leave under proper authorization at Government expense prior to the expiration of two years' 'continuous service abroad,' does it interrupt the continuity of such service?

"4. If any or all of the three questions presented above are answered in the negative, is the amount of leave taken subject to a maximum time limitation?

"5. If questions 1, 2, and 3, or any of them are answered in the negative, must the period of 'continuous service abroad' be extended beyond two years for a period equal to the amount of interim leave taken before the employee is entitled to home leave?

"6. If in any case covered by the first three questions, leave is construed to constitute a break in service, would it be required to again start a new two year period for home leave purposes upon return to the foreign post?"

You state that the foregoing questions are presented in order to enable you to "prescribe proper regulations" under section 5(a)(3)(A) of the Central Intelligence Agency Act approved June 20, 1949, Public Law 110, reading as follows:

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"(a) Under such regulations as the Director may prescribe, the Agency * * * shall - -

"Order to the United States or its Territories and possessions on leave provided for in 5 U.S.C. 30, 30a, 30b, or as such sections may hereafter be amended, every officer and employee of the agency who was a resident of the United States or its Territories and possessions at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter; Provided, That such officer or employee has accrued to his credit at the time of such order, annual leave sufficient to carry him in a pay status while in the United States for at least a thirty-day period."

In 19 Comp. Gen. 750, referred to by you, it was held quoting from the syllabus:

"Section 22 of the act of February 23, 1931, 46 Stat. 1210, authorizing the Secretary of State to order to the United States on his statutory leave of absence, at Government expense, any Foreign Service officer or vice consul of career who has performed 3 years or more of continuous service abroad, does not require that an officer remain at all times physically present within the service abroad in order to meet the 'continuous service' requirement, and where an officer's temporary return to the United States for consultation purposes had direct connection with, or relation to, his assigned post of duty abroad, it did not constitute a break in his 'continuous service abroad' within the meaning of the section."

It is the view of this Office that in the absence of express legislative intent to the contrary the term "continuous service abroad" as used in the Central Intelligence Agency Act reasonably and properly may be construed as requiring only continuous employment in the Central Intelligence Agency while under an assignment abroad and, as held in the above decision with respect to the Foreign Service, periods of consultation service in the United States under proper orders need not be considered as constituting a break in the continuity of service abroad and may be counted as part of the two years' continuous service. However, having in mind the evident intent of the law to relieve the hardship of prolonged absences from the United States, it appears reasonable to conclude that periods of annual or sick leave spent in the United States under the stated circumstances--while they need not be held to constitute a break in the continuity of service abroad--should not be counted as service abroad. Compare 27 Comp. Gen. 720. Accordingly,

questions 1, 2, and 3 properly may be answered in the negative, and question 5 in the affirmative, which answers render unnecessary any consideration of question 6.

With regard to question 4, the amount of leave taken in the United States under conditions specified in questions 1, 2, and 3 would not appear to be material except, of course, that it should not exceed the maximum amount of sick or annual leave which may be granted under the applicable annual and sick leave regulations.

Sincerely yours,

/s/ Frank Yates
Comptroller General
of the United States